

## **Independent Human Rights Act Review (IHRAR) Call for Evidence**

### **Women's Aid Federation of England Submission**

Women's Aid Federation of England (WAFE) is a national charity working to end domestic abuse against women and children. We are a federation of nearly 170 organisations which provide just under 300 local lifesaving services to women and children across the country. Over the past 45 years, Women's Aid has been at the forefront of shaping and coordinating responses to domestic abuse through practice, research and policy. We empower survivors by keeping their voices at the heart of our work, working with and for women and children by listening to them and responding to their needs.

We welcome the opportunity to submit a response to the Independent Human Rights Act Review (IHRAR) call for evidence. However, the questions outlined in the call for evidence are focused on how the law might be changed, and do not ask how effectively it is working right now. We feel it is vital that we share the difference the Human Rights Act (HRA) has made for survivors of domestic abuse and other forms of Violence Against Women and Girls (VAWG), and the services that support them, which must inform any review of the HRA.

### **Why the Human Rights Act is important for survivors and VAWG services**

Domestic abuse, and other forms of VAWG, are violations of human rights and a form of discrimination against women. These crimes are deeply rooted in the societal inequality between men and women. As a domestic abuse charity, WAFE strongly believes that the HRA is a critically important means for addressing injustice and inequality that impact women and children experiencing domestic abuse and other forms of violence against women. The European Court of Human Rights has made it clear that domestic abuse can fall within the scope of Articles 2, 3, 8 and 14<sup>1</sup> and that a state can be held to be in breach of those rights if they have not taken sufficient steps to protect survivors from abuse<sup>2</sup>.

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<sup>1</sup> Article 2: right to life

Article 3: freedom from torture and inhuman and degrading treatment

Article 8: respect for private and family life, home and correspondence

Article 14: protection from discrimination in respect of the rights and freedoms in the convention.

<sup>2</sup> Birchall, J. and Choudhry, S. (2018). *What about my right not to be abused? Domestic abuse, human rights and the family Courts*. Women's Aid Federation of England and Queen Mary University. Available: <https://1q7dqy2unor827bqjls0c4rn-wpengine.netdna-ssl.com/wp-content/uploads/2018/05/Domestic-abuse-human-rights-and-the-family-courts-report.pdf>

Therefore, the HRA provides a number of opportunities to address the inequalities and injustices faced by survivors of abuse:

- **Empower survivors and advocates to raise concerns with public bodies and services.** Survivors of domestic abuse face many barriers to getting the help they need, including discrimination and gatekeeping by statutory agencies. For example, in 2019-20 Women's Aid's No Woman Turned Away project supported 104 (42.8%) women who had contacted a housing team, and at least 32 of these (30.8%) were prevented from making a valid homelessness application<sup>3</sup>. Furthermore, 63 (25.9%) women supported by the project had contacted social services while searching for a refuge space; and the responsible teams failed to meet their obligation to safeguard women and children in at least 18 (28.6%) of those cases<sup>4</sup>. The HRA empowers survivors and support services to challenge such public bodies and advocate for the support they are entitled to.
- **To support our campaigning efforts to improve access to justice, protection and support for survivors.** As a national domestic abuse charity, we are all too aware of the scale of change needed to fully meet survivors' needs and ensure their wellbeing and safety. The HRA supports our campaigning efforts to call for these changes needed in practice, policy and law; and a framework to challenge proposed laws or policies which undermine the human rights of survivors and their children.
- **Protects survivors' rights and places duties on national and local government and services, which the courts can independently review.** Government and public authorities do not always get things right in their response to domestic abuse and VAWG, and this results in survivors being unable to access their rights to safety, protection and support. The HRA provides a framework to challenge these injustices and hold public bodies accountable, including failings in the police response and in the family courts<sup>4</sup>. The HRA has been used to bring cases against individual police forces when they have failed in VAWG cases, and has required them to change the way they work in response to VAWG. For example, the high profile John Worboys case, in which The High Court concluded that the Metropolitan Police's failings amounted to a clear breach of the woman's human rights<sup>5</sup>. Whilst of course we would far rather that legal action is not required to ensure women can access their rights, the reality of women's experiences suggests otherwise – and the HRA is an essential protection in this regard.

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<sup>3</sup> Austin, J. (2020). 'No Where to Turn'. Available: <https://www.womensaid.org.uk/wp-content/uploads/2020/06/Nowhere-to-Turn-2020.pdf>. Women's Aid Federation of England

<sup>4</sup> Austin, J. (2020). 'No Where to Turn'. Available: <https://www.womensaid.org.uk/wp-content/uploads/2020/06/Nowhere-to-Turn-2020.pdf>. Women's Aid Federation of England.

<sup>5</sup> Ofer, N (2017). 'Violence against women and girls: Protecting women's human rights and holding the state to account'. End Violence Against Women Coalition and Southall Black Sisters. Available: <https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/Human-Rights-Act-report-Oct-2017.pdf>

## **Examples of when we, and our members, have used the rights and duties in the Human Rights Act:**

As illustrated above, specialist domestic abuse and VAWG services often rely on the rights and duties in the HRA in a preventative way – reminding public bodies of their duties to women and children escaping abuse, and preventing a case from reaching the courts. There are numerous examples of this from our No Woman Turned Away (NWTa) project - a project that provides specialist casework support for women facing barriers to accessing a refuge space. The caseworkers regularly work with solicitors, who are often required to inform local authorities that are in breach of their legal obligations and use the threat of judicial review as an essential means of ensuring that survivors' rights to safe housing and protection for children are upheld. For example:

- In September 2020, the project supported a woman with seven children whose ex-partner posed an ongoing risk to her safety. Her teenage daughter accidentally disclosed their address to the father, who attended the property and assaulted the mother. She applied for rehousing in another local authority – but the housing team refused her application on the grounds that he 'only' put his hands round her throat, didn't injure her, and they felt that she didn't adequately supervise the teenager to prevent the details being passed on. The NWTa team engaged a solicitor and as a result of their intervention, the woman was offered a three-bed temporary property.
- In July 2020, the project supported a woman, a Jamaican national with 5 British children, who had been in the UK for 20 years. Due to barriers linked to her immigration status, and agencies providing poor support and advice, the woman had continued to return to the perpetrator. Social services had even offered her money to take the children to Jamaica. As a result of the intervention from the lawyer, social services agreed to fund food and accommodation for them and her immigration status issues have been resolved.
- In October 2020, the project supported a survivor who was placed by her local authority in unsuitable temporary mixed-sex accommodation in a different local area from her home in London, where she was receiving ongoing mental health support. She was then informed that the temporary accommodation was for a month only and as she had continued to stay there after that time, and had not secured other accommodation, she was called at 6pm in the evening and told to leave immediately– leaving her effectively street homeless in a strange area. We engaged a solicitor, who is challenged the local authority's original decision to not assist her in finding something more suitable for her mental health support needs in London.

There are also numerous examples of how our frontline member services use the Human Rights Act to uphold survivors' rights, including:

- Solace Women's Aid, 'Safe as Houses' report (2020), quotes a woman who experienced physical, sexual and financial abuse from her husband, who stated that due to legal challenges made by Solace Women's Aid on her behalf, the local authority "were obliged to put us in temporary accommodation"<sup>6</sup>.
- Latin American Women's Aid and the London Black Women's Project, 'A Roof Not A Home' (2019), quotes a refuge worker who stated "there are many cases of women told to go back to the borough where the refuge they live is based on, because they say this is their local connection. After a key worker intervenes, the Council will often respond differently, especially when threatened with court challenge"<sup>7</sup>.

Where these measures have been unsuccessful, WAFE has used the Human Rights Act to support legal challenges to uphold and protect the human rights of survivors. This has included a **legal challenge on the bedroom tax**, which went to the European Court of Human Rights – who ruled in 2019 that *'the UK Government had unlawfully discriminated against vulnerable victims of domestic violence'*<sup>6</sup>. WAFE intervened in a case assessing the **impact of the 'benefit cap'** on lone parents with young children – focusing on how this social security policy impacted on access to safety for women escaping domestic abuse.<sup>8</sup>. And most recently in 2020, WAFE intervened in the case of *R (on the application of FB) v London Borough of Camden*, where a female survivor of domestic abuse was placed into a **mixed-sex homelessness hostel** which did not meet her needs and exposed her to further trauma. The case has resulted in the local authority responding positively to the legal challenge - reviewing their process for accepting homelessness applications under the Housing Act 1996, Part VII, and the use of mixed gender accommodation under s.188 Housing Act 1996. This successful case not only demonstrates how the HRA upholds the rights of a survivor in an individual case, but has also led to practical benefits for a wider group of survivors affected by these issues.

The HRA in its current form provides an essential framework to protect the human rights of survivors of domestic abuse, and a critical backstop where legal and policy reforms, or practice by public bodies, are undermining those rights. The Government's focus must be on ensuring the rights we currently have are respected, protected and fulfilled. We must support people to know their rights; empower them (and supporting services) to ensure

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<sup>6</sup> Solace Women's Aid (2020). 'Safe as Houses?' Available: [https://www.solacewomensaid.org/sites/default/files/2019-10/Solace\\_SafeasHousesReport\\_FINAL\\_0.pdf](https://www.solacewomensaid.org/sites/default/files/2019-10/Solace_SafeasHousesReport_FINAL_0.pdf)

<sup>7</sup> Latin American Women's Aid and the London Black Women's Project. (2019). 'A Roof Not A Home'. Available: [https://lawadv.org.uk/wp-content/uploads/2019/10/WAHA\\_A-roof-not-a-home-report\\_WEB.pdf](https://lawadv.org.uk/wp-content/uploads/2019/10/WAHA_A-roof-not-a-home-report_WEB.pdf)

<sup>8</sup> *R (on the application of DA) v Secretary of State for Work and Pensions* [2017] EWHC 1446 (Admin).

their human rights are upheld; and ensure people's human rights are integrated into national and local policy and practice. **We are deeply concerned about any changes the UK Government might make to the Human Rights Act that will result in less protection of rights. Society is too often failing survivors of domestic abuse and VAWG, and to weaken a framework (the HRA) which allows survivors to challenge these failings would be a deeply worrying development.**